

DOUGLAS F. PETERSON

IBLA 73-415

Decided November 15, 1973

Appeal from a decision by Manager, Missoula, Montana, District Office, Bureau of Land Management, consolidating grazing lease No. 2507705 with grazing lease No. MDO-259 and requiring a grazing management plan.

Affirmed as modified.

Administrative Procedure: Burden of Proof! ! Grazing Leases:
Generally

A district manager's decision prescribing a range management plan, including a rest rotation system to increase forage in order to improve the deteriorated condition of federal range within a grazing lease, will be sustained in the absence of the lessee's showing of error.

Fees! ! Grazing Leases: Generally! ! Grazing Leases: Applications

Except for the minimum \$ 10 rental fee required for all grazing leases, a rental fee is not required by the regulations or lease terms where grazing is not permitted for a season because of a rest rotation system prescribed in a range management plan for the grazing lease. Rental fees are based upon animal unit months where there is authorized grazing use and not where use is forbidden.

APPEARANCES: Douglas E. Peterson, pro se.

OPINION BY MRS. THOMPSON

Douglas F. Peterson appeals from a decision by the Manager, Missoula, Montana, District Office, Bureau of Land Management (BLM), which consolidated grazing lease No. 2507705 (Nelson Gulch Pasture) with grazing lease No. MDO-259 (Blue Cloud Pasture) and required that all grazing be done according to a prescribed grazing system. The decision was made in response to Peterson's application to renew grazing lease No. 2507705. The amended! consolidated lease restricts Peterson from using the grazing allotments in 1973, reduces his use of them in subsequent years, and institutes a rest rotation grazing management plan to restore ground cover. 1/

Peterson contends the restrictions placed on his allotment will result in the nonuse of his privately! owned grazing land and that alternative management techniques, not having this result, are available which "will also not harm the BLM lands but rather help them." Peterson did not supply any details of this alternative plan, nor allege in what way, if any, the BLM plan was incorrect.

The District Manager has authority to institute the reductions and rest rotation system. Section 2(b) of the lease provides:

The lessor expressly reserves the right to:

* * * * *

1/ The grazing management system provided in part:

Cattle shall be the only kind of livestock authorized to graze. The treatments to be applied in each pasture for the remainder of the lease period are as follows:

	<u>Nelson Gulch Pasture</u>	<u>Blue Cloud Pasture</u>
1973	Rest	Rest
1974	75 A.U.'s 7/10 ! 7/31	75 A.U.'s 8/1 ! 9/14
1975	75 A.U.'s 8/10 ! 8/31	Rest

We note that "75 A.U.'s" is the equivalent of 900 A.U.M.'s. The District Manager apparently meant to say "75 head." The decision also erroneously added Lot 2, section 7, T. 9 N., R. 4 W., P.M., rather than Lot 1, the tract in expired lease 2507705. The decision is corrected accordingly.

(b) Close portions of the leased area to grazing whenever, because of depletion of vegetal cover due to drought, epidemic, fire, or any other cause, such action is deemed necessary to restore the range to its normal condition. However, such temporary closing of any area shall not operate to exclude such area from the boundaries of the lease.

Similarly, section 3(c) of the lease provides:

The district manager may require the lessee to enter into a grazing management plan to promote the proper use, conservation, and protection of the public lands. The district manager shall consult with the lessee in the formation of the management plan. The district manager shall thereafter, by written decision include the management plan as part of the lease terms, subject to the lessee's right of appeal as provided in 43 CFR Part 1840.

The grazing program and reductions required by the District Manager here are authorized by the lease, and also by regulations 43 CFR 4121.2-1, 4121.3-3(a), 4125.1-1(i). While appellant suggests that alternative methods of range management exist, he does not delineate these methods or explain why the method selected by the District Manager is wrong. Where an authorized officer has acted within his authority to protect the federal range in determining the extent of grazing privileges and conditions under which they may be exercised under a lease, his decision will be sustained in the absence of a clear showing of error. Bill Cleverly, A-30530 (June 15, 1966); Western Farm Management, A-30594 (December 14, 1966).

A district manager's decision will not be sustained, however, if there is no rational basis in the record for his decision. United States v. Maher, 5 IBLA 209, 79 I.D. 109 (1972). The record indicates the need for improved management on the Blue Cloud pasture. These reasons should have been indicated in the District Manager's decision. The failure to do so, however, does not require reversal where the record supports his conclusion. The record shows the Blue Cloud Pasture has been overgrazed: ground cover is low; plant vigor is poor; and the pasture is dominated by low quality forage plants. The record does not show that these reasons apply equally to the Nelson Gulch pasture, so as to necessitate its complete rest for one year. The only reason in the record for the rest on Nelson Gulch is a conflict between domestic and wildlife grazing requirements. The propriety

of imposing complete rest on the Nelson Gulch pasture, however, is now moot since the 1973 grazing season is over. The decision permitted grazing usage in that pasture for subsequent seasons. That permission stands.

The District Manager acted in accordance with the terms of the lease and regulations to improve the deteriorated condition of the range, by prescribing the management rest rotation plan as to the Blue Cloud Pasture and the decision is affirmed to that extent.

Despite requiring rest for the 1973 season, the District Manager required the lessee to pay rent for that season based on the estimated carrying capacity of the range. He indicated that the regulations do not provide for taking nonuse, and that payment for the estimated carrying capacity of the land is required even if it is not used every year. The regulations prescribe a minimum annual rental charge of \$ 10 on all grazing leases. 43 CFR 4125.1-1(m)(1)(i). The rental rate is not based on an acreage basis but upon the animal unit months (AUM's) authorized by the lease. There are no fees for livestock under 6 months of age. 43 CFR 4125.1-1(m)(1). Rental fees are based upon animal unit months where there is authorized grazing use and not where use is forbidden. If the management plan which is authorized by the lease does not permit grazing in a given season, there is no authorized grazing for that season. Consequently, no rental for the rest periods is required and the decision was incorrect to that extent. See also, 43 CFR 4125.1-1(i)(9).

The decision also erred in informing Peterson that a five! dollar filing fee was required for the appeal. Such a fee is no longer required by the regulations. Peterson may be entitled to a refund for payments made in excess of those required by the regulations. The decision is modified to make these corrections.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified by the corrections made herein.

Joan B. Thompson
Member

We concur:

Douglas Henriques
Member

Frederick Fishman
Member

